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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order Approving the Sale of the Main Office under Section 851 and Authorizing the Investment of the Sale Proceeds under Section 790.

Application 07-01-035
(Filed January 22, 2007)

ASSIGNED COMMISSIONER'S RULING GRANTING, IN PART, SAN JOSE WATER COMPANY'S MOTION FOR RECONSIDERATION

1. Summary

This ruling grants, in part, San Jose Water Company's (SJWC) June 25, 2007 Motion for Reconsideration (Motion) of the June 15, 2007 Administrative Law Judge's (ALJ) ruling suspending the schedule in this proceeding (Suspension Ruling). In doing so, I find that an application is required under § 851,¹ and that the filing of Application (A.) 07-01-035 was appropriate.

I also find that the property to be sold in the Proposed Transaction is necessary and useful utility property, and will continue to be so for a period of time after the sale. Therefore, any proceeds from the sale of SJWC's main office are not eligible for reinvestment pursuant to § 790. The suspension of the

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

schedule in this proceeding is lifted, and the ALJ is directed to issue a ruling to schedule hearings to address the remaining issues in this proceeding.

Finally, I find that the Suspension Ruling is factually accurate when it states SJWC did not submit its brief by the established June 4, 2007 deadline, nor explain why it failed to meet the deadline or to ask for additional time.

2. Background

On January 22, 2007, SJWC filed A.07-01-035 (Application) requesting for an order approving the sale of its main office for \$4 million (Proposed Transaction) under § 851.² In addition, the Application requests a Commission determination that its main office is no longer necessary or useful, and authorization to reinvest the net proceeds of the sale in infrastructure pursuant to § 790.³ The Application also requests approval for an increase of \$1,870,782 in its

² No public utility ...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its ...property necessary or useful in the performance of its duties to the public...without first having ... secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained a resolution from the commission authorizing it to do so. (§ 851)

³ § 790 states: (a) Whenever a water corporation sells any real property that was at any time, but is no longer, necessary or useful in the performance of the water corporation's duties to the public, the water corporation shall invest the net proceeds, if any, including interest at the rate that the commission prescribes for memorandum accounts, from the sale in water system infrastructure, plant, facilities, and properties that are necessary or useful in the performance of its duties to the public. For purposes of tracking the net proceeds and their investment, the water corporation shall maintain records necessary to document the investment of the net proceeds pursuant to this article. The amount of the net proceeds shall be a water corporation's primary source of capital for investment in utility infrastructure, plant, facilities, and properties that are necessary or useful in the performance of the water corporation's duties in providing water utility service to the public.

Footnote continued on next page

revenue requirement for 2007, representing an increase of 1.05% above the revenue requirement adopted for SJWC in its most recent general rate case (GRC), D.06-11-015. SJWC seeks to recover 50% of this additional revenue requirement through the service charge component and the remainder through the quantity rate component of its tariffed rates.

Notice of the Application appeared on the Commission's Daily Calendar on January 24, 2007. The Division of Ratepayer Advocates (DRA) filed a protest on February 23, 2007, stating its desire to ensure that ratepayers benefit from both the sale of SJWC's Main Office and the reinvestment of the net proceeds from the sale. A prehearing conference (PHC) was held on March 16, 2007, where SJWC and DRA were in attendance.

At the March 16, 2007 PHC, DRA raised concerns as to whether SJWC selected the alternative which is in the best interests of ratepayers, and questioned whether the proposed rate increase was consistent with the rate case

(b) All water utility infrastructure, plant, facilities, and properties constructed or acquired by, and used and useful to, a water corporation by investment pursuant to subdivision (a) shall be included among the water corporation's other utility property upon which the commission authorizes the water corporation the opportunity to earn a reasonable return.

(c) This article shall apply to the investment of the net proceeds referred to in subdivision (a) for a period of 8 years from the end of the calendar year in which the water corporation receives the net proceeds. The balance of any net proceeds and interest thereon that is not invested after the eight-year period shall be allocated solely to ratepayers.

(d) Upon application by a water corporation with 10,000 or fewer service connections, the commission may, after a hearing, by rule or order, exempt the water corporation from the requirements of this article.

(e) The commission retains continuing authority to determine the used, useful, or necessary status of any and all infrastructure improvements and investments.

plan (RCP) for water utilities.⁴ DRA asserts that SJWC's request for a rate increase outside of its scheduled GRC is contrary to the RCP, and any rate increase should be considered in SJWC's next GRC. DRA states that SJWC's estimated rate increase is based on SJWC's preferred option, and contends that the actual rate increase will depend on which option the Commission may ultimately approve. Thus, according to DRA, the potential rate impact of the Application is unknown, partly because the Application does not include information about the cost of facilities that will be purchased to replace the main office. SJWC responded that it was close to reaching agreement on the purchase of a new office, and agreed to serve supplemental testimony addressing the cost, location and other information concerning the new facility.

The assigned ALJ identified D.06-05-041 as appearing relevant to the Proposed Transaction. Among other things, D.06-05-041 adopts procedures for allocating gains and losses on sale received by certain electric, gas, telecommunications and water utilities when they sell utility land, assets such as buildings, or other tangible or intangible assets formerly used to serve utility customers, including procedures for water utilities reinvesting sales proceeds under Pub. Util. Code § 790. SJWC responded that it could not decide on its own that its property was no longer necessary or useful, and that it was required to file an application pursuant to § 851 so the Commission could make this determination.

The Assigned Commissioner's Scoping Memo and Ruling (ACR/Scoping Memo) issued March 30, 2007, included among the issues to be considered

⁴ The RCP for Class A water utilities was adopted by D.04-06-018 and D.06-02-010 (as modified by D.06-06-037).

whether D.06-05-041 applies to the Proposed Transaction, and if so, whether the Application satisfied the requirements of that decision. The ACR/Scoping Memo directed SJWC to address these issues in its supplemental testimony, and established April 30, 2007 as the deadline for SJWC to submit its supplemental testimony.⁵

SJWC requested by electronic mail on April 30, 2007, an extension of time until May 7, 2007 to submit its supplemental testimony, and sought clarification that its filing on legal issues should be in the form of a brief. No other party objected to the request. SJWC's request extension of time was granted via email on April 30, 2007. The April 30 ruling also clarified that SJWC's filing on legal issues should be in the form of a brief.

SJWC served supplemental testimony on May 7, 2007 addressing the purchase of a new main office facility, but requested an extension of time until May 11, 2007 to submit its brief on the legal issues identified in ACR/Scoping Memo (Brief). SJWC subsequently requested another extension of time to submit its Brief. Both requests were granted by ALJ rulings on May 7 and June 1, 2007, ultimately extending the deadline for submitting its Brief until June 4, 2007. The June 1, 2007 ALJ ruling also granted DRA an extension of time until June 15, 2007 to serve its report and testimony. SJWC did not submit its Brief by the June 4, 2007 deadline, or explain why it failed to meet the deadline or to ask for additional time.

On June 15, 2007, the ALJ issued the Suspension Ruling suspending the schedule and stating his intention to recommend dismissing the Application.

⁵ DRA was also directed to address the issue in its testimony scheduled for filing on June 8, 2007.

The Suspension Ruling explained why D.06-05-041 appeared to apply to the Proposed Transaction and discussed SJWC's failure to address this issue as directed by the ACR/Scoping Memo.

On June 25, 2007, SJWC filed its Motion appealing the Suspension Ruling. SJWC's Motion contends that the Suspension Ruling is factually and legally erroneous, and misapplies the holdings of D.06-05-041.⁶ The Motion contends that the Suspension Ruling "...confuses the protocol for determining whether property dedicated to the public good can be sold in the first instance with the protocol for determining how to allocate any gain resulting from the sale of such property."⁷ SJWC further contends that its Application was filed as directed by § 851 and Commission precedent, and that D.06-05-041 does not change the law that SJWC must file a § 851 application before selling property that is still in use.⁸

SJWC included with its Motion as an attachment a copy of its Brief, entitled, "San Jose Water Company's Report on Legal Issues Set Forth in Scoping Memo." Like its Motion, SJWC's Brief contends D.06-05-041 is not applicable to its Application, and that the scope of Rulemaking (R.) 04-09-003, leading to D.06-05-041, is limited to the *allocation of gains* from the sale of utility assets but not to the *sale* of that property.⁹ The Brief contends that the scope of D.06-05-041 is further narrowed in that it deals only with *formerly* used and useful property. The Brief concludes that, since the property involved in the Proposed

⁶ Motion, p. 2.

⁷ Ibid., p. 2. Emphasis in original.

⁸ Ibid., p. 3.

⁹ Brief, p. 1.

Transaction is still being used for public utility service, SJWC is required to file an application pursuant to § 851.

SJWC contends D.04-03-039 and D.04-09-028 establish that it must file a § 851 application before it may sell assets. D.04-09-028 addresses Southern California Water Company's (SCWC) application for rehearing of D.04-03-039. D.04-03-039 found that SCWC violated § 851 when in November 1994, without seeking Commission approval, SCWC entered into a lease agreement with the City of Folsom (City) allowing the City in perpetuity to lease 5,000 acre-feet per year (AFY) of water rights from SCWC's 10,000 AFY allocation of water from the American River. D.04-03-039 concluded that the lease was void, imposed a fine on SCWC, and ordered 70% of the revenues received under the lease to be credited to SCWC's ratepayers. D.04-03-039 states:

“In recent decisions, this Commission has confirmed that utilities must file § 851 applications even when they believe the assets in question are no longer necessary or useful for utility service”. (P. 50)

D.04-03-039 concluded that SCWC violated § 851 when it failed to gain the Commission's approval prior to effectuating the Folsom lease, and SCWC's violation of § 851 was a severe offense that harmed ratepayers and the regulatory process.¹⁰ Upon rehearing, D.04-09-028 affirmed D.04-03-039's determination that SCWC violated § 851, stating:

“In case after case, it is the Commission that determines, after a utility comes in for section 851 approval, that such approval is or is not required because the property is or is not necessary or useful to the company's public utility business. While the Citizens case, supra, does state that the initial determination is for the utility to

¹⁰ Conclusions of Law 26 and 32.

make, it also states that '[i]n any event the issue [of necessary or useful] is a factual one that the Commission may review.' Id. SCWC's great failing is not having come before us in 1994." (P. 8)

We continue to ask why all of this was not put before the Commission in 1994. Even if SCWC was so certain that these factors would put the transaction out of our reach, the appropriate action was to have come to us for a ruling to that effect. It chose not to do so at its peril, relying instead on its own evaluation that it did not need prior authorization under section 851. (P.12.)

The Brief contends that D.04-03-039 and D.04-09-028 are the correct decisions to look to, and they establish that SJWC must file a § 851 application to obtain permission to sell its main office.

Finally, SJWC contends that the Suspension Ruling errs in stating that SJWC failed to submit its Brief on June 4, 2007. SJWC states that it served its Brief by mail on June 4, 2007, and was unaware that the ALJ or any party had not received its Brief until the Suspension Ruling was issued.

3. Discussion

SJWC's Motion and Brief addressed the following legal issues identified in the ACR/Scoping Memo for this proceeding:

1. Does Decision 06-05-041 apply to the sale of San Jose Water's main office, and if so, does the application satisfy the requirements of that decision?
2. Does the application (that is, the request for permission to sale) require Commission approval under Pub. Util. Code § 851?

Based on the information provided in SJWC's Application, Motion and Brief, I am able to resolve Issues 1 and 2 at this time. Also, as a result of resolving Issues 1 and 2, and based on the information provided in SJWC's

Application, Motion and Brief, I also resolve Issues 3 and 4 identified in the ACR/Scoping Memo.¹¹ Thus, as a result of this ACR, only Issues 5 and 6 remain for resolution in this proceeding and will be scheduled for hearing. I first address the legal issues identified in the ACR/Scoping Memo and addressed in SJWC's Brief.

a. Does Decision 06-05-041 apply to the sale of San Jose Water's main office, and if so, does the application satisfy the requirements of that decision?

To assist our understanding of what D.06-05-041 does with respect to water utilities, we look to the Order Instituting Rulemaking to see what R.04-09-003 contemplated and whether D.06-05-041 should be expected to differ in its resolution of issues concerning § 851 in relation to regulated utilities generally, and water utilities, in particular. R.04-09-003, in general, addresses the allocation of gains on sale of utility assets. However, because § 790 predetermines the allocation of gains from the sale of no longer necessary or useful water utility real property, R.04-09-003 also addresses the implications of § 790 for water utilities, and § 790's relationship to § 851.

In particular, R.04-09-003 includes, among other things, the following in its scope of issues related to water utilities:

"In order to reconcile § 790 and 851, at what point do we require the utility to file an application? If the utility files a § 851 application at the time of the sale and the Commission approves the sale, what

¹¹ Issue 3 states: "Should the Commission find that the main office and/or other real property being sold are no longer necessary or useful?" Issue 4 states: "May San Jose Water use the proceeds from the sale of its main office building to acquire a new company headquarter and a walk-in customer service facility in downtown San Jose pursuant to § 790 of the Public Utilities Code?"

must the utility file at the end of the eight years, if anything, to reconcile the net proceeds"? (P. 29.) (Emphasis added.)

"Further interpretation of Water Utility Infrastructure Improvement Act of 1995, P.U. Code §§ 789, et seq., is merited. This Commission has not previously considered how to reconcile this statute with our statutory obligations pursuant to Public Utilities Code § 451 and 851." (Finding of Fact 39)

Thus, R.04-09-003 includes among its scope of issues whether and when a water utility should file a § 851 application.

In prior cases concerning the sale of water utility assets, the Commission has found that either Commission authorization was necessary to sell assets the Commission determined were necessary or useful utility property, or that the assets at issue were not necessary or useful utility property and did not require Commission authority to sell.¹² Prior to the adoption of D.06-05-041, the Commission required, or at least encouraged, water utilities to seek Commission approval before disposing of utility property the water utilities believed was no longer necessary or useful.¹³ However, in light of § 790's requirement that the full gain on reinvested asset sales of no longer necessary or useful utility

¹² See, for example, D.88-04-068, D.92-12-059, D.97-08-021, D.03-05-001, D.04-07-031, D.03-09-021, D.04-03-039 (modified by D.04-04-069 and D.04-09-028), D.04-07-034, D.05-12-002.

¹³ § 851 states, in part, "Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public." Thus, utilities are not required by § 851 to seek Commission approval to sell property that is not necessary or useful. However, the Commission has encouraged utilities to file an application as a precaution against the possibility that the Commission might subsequently determine that property was, in fact, necessary or useful and was sold without Commission authorization.

property be included in rate base, the Commission was concerned about “churning” of assets by utility management as a way to increase rate base and profits.

In discussing the comments on the draft decision (DD) of Commissioner Brown, D.06-05-041 states:

“The water companies oppose the draft decision’s requirement that they file § 851 applications seeking Commission approval of their sales of property that is no longer used and useful. The draft decision reasons that it should be up to the Commission to verify water companies’ claims that the property they are selling is truly no longer useful. It expresses concern that leaving this determination entirely to water companies may allow them to sell property (including water rights) necessary to service without any Commission intervention...As the draft decision points out, the Commission is currently trialing a program that allows parties seeking to sell property governed by § 851 (used and useful property) to do so by advice letter rather than application. The water companies seek either to be covered by this program, or to be exempted from any review requirement at all...We are not prepared to exempt water utilities from any filing requirement. It is reasonable to require an entity other than the utility itself – which stands to gain from property sales – to verify that property proposed for sale is no longer used and useful. Section 851 gives us discretion to review such applications. By the same token, we are persuaded that requiring a § 851 application for every sale would be cumbersome...We modify the decision to require that water companies regulated by this Commission provide 30 days’ advance written notice to the Director of the Commission’s Water Division, as well as to the Director of ORA (now DRA) when they propose to sell land, water rights, buildings, or all or a portion of a water system that they determine are no longer used or useful. This notice will give the Commission the opportunity to respond to the proposed sale and prevent sales of property that is obviously used and useful...However, Commission silence in response to the notice should not be interpreted as consent to the sale. At a later time, such as the water company’s general rate case, the Commission may

nonetheless inquire into the propriety of water company asset sales...We acknowledge that we are requiring that water companies to provide notice that we do not require of other utilities. We believe that the different treatment of water utility gains on sale under § 790 justifies this result. Because all proceeds under § 790 go to the utility – rather than its ratepayers – water companies may be more eager to sell property than they otherwise should. A notice requirement at least gives the Commission the opportunity to review such sales in advance.” (Pp. 83-85.)

Thus, D.06-05-041 states that the Commission retains discretion to review applications for the sale of utility property pursuant to § 851, and D.06-05-041 did not exempt water utilities from this filing requirement. Although the Commission continues to require water utilities to obtain approval before they sell necessary or useful property, the Commission was concerned that water utilities would too quickly decide property was no longer useful, so that any proceeds from the sales of such property might be entirely reinvested in utility infrastructure pursuant to § 790. Therefore, D.06-05-041 established an additional notification procedure to ensure that utilities which did not file a § 851 application would, at minimum, notify the Commission of their intention to sell property.

I conclude that D.06-05-041 does no change the requirement for a water utility to obtain Commission approval before selling necessary or useful property. D.06-05-041 establishes an additional notification procedure for water utilities which have not filed an application with the Commission for approval to sell property the utilities believe is no longer necessary or useful. However, the notification procedure does not apply to the Proposed Transaction because SJWC has filed an application with the Commission. Therefore, I also conclude that SJWC’s application for authorization to sell property is the appropriate way to

seek Commission approval to sell property under § 851.¹⁴ This determination resolves Issue 1.

b. Does the application (that is, the request for permission to sale) require Commission approval under Pub.Util. Code § 851?

SJWC's Motion contends "the Main Office...is still in rate base and generating a revenue requirement... is currently occupied and being used to provide service to SJWC's customers...", and therefore, SJWC contends it must file a § 851 application before selling property that is still in use.¹⁵

Also, the Application states,

"All corporate functions are located at the Main Office, which also serves as a place for customers to walk in for bill payment or to obtain personal assistance from customer service representatives."¹⁶

"...Buyer will provide a license to Seller in order to allow Seller to park in the portions of the SJWLC Real Property Lease pursuant to the license (the "Temporary License for Parking"), attached hereto as Exhibit E. The Temporary License for Parking will terminate upon the earlier of (i) June 14, 2008, or (ii) expiration of the SJWC

Real Property Lease (as hereinafter defined)."¹⁷

¹⁴ The Proposed Transaction might also be eligible for filing as an advice letter under the § 851 Pilot Program adopted August 25, 2005 by Resolution ALJ-186, as modified by Resolution ALJ-202, adopted August 23, 2007.

¹⁵ Motion, pp. 2-3, 5.

¹⁶ Application, p. 2.

¹⁷ January 2007 Report on Facilities Consolidation and Main Office Relocation, YOO Attachment B (Agreement of Purchase and Sale Summary of Certain Terms), Agreement of Purchase and Sale, Paragraph J, p. 2.

“The License to be entered into upon the Closing Date for the SJWLC Real Property will allow San Jose Water Company to park in specified portions of the SJWLC Real Property starting on the Closing Date for the SJWLC Real Property. The SJWC Real Property Lease will not commence until the Closing Date for the SJWC Real Property (including the Building).”¹⁸

“...Buyer, as landlord, and Seller, as tenant, will enter into a lease (the “SJWC Real Property Lease”) of the SJWC Real Property for a period commencing on the Closing Date (as hereinafter defined), and expiring on June 14, 2008.”¹⁹

It is clear from the information contained in SJWC’s Application and Motion that the property to be sold continues to be necessary and useful utility property. Moreover, because the Proposed Transaction is structured so SJWC may lease the property from the Buyer so SJWC can continue using the property for a period of time after the sale, the property will continue to be necessary and useful not only at the time of sale but also for some period of time after the sale. Thus, I conclude that property to be sold in the Proposed Transaction continues to be necessary and useful utility property. Therefore, the sale of SJWC’s main office requires Commission approval under Pub.Util. Code §851. This determination resolves Issue 2.

¹⁸ January 2007 Report on Facilities Consolidation and Main Office Relocation, YOO Attachment B (Agreement of Purchase and Sale Summary of Certain Terms), Exhibit E.

¹⁹ January 2007 Report on Facilities Consolidation and Main Office Relocation, YOO Attachment B (Agreement of Purchase and Sale Summary of Certain Terms), Agreement of Purchase and Sale, Paragraph K, p. 2.

Based on the information contained in SJWC's Application, Motion and Brief, and given the above resolution of Issues 1 and 2, I am also able to resolve Issues 3 and 4 identified in the ACR/Scoping Memo.

- c. Should the Commission find that the main office and/or other real property being sold are no longer necessary or useful? May San Jose Water to use the proceeds from the sale of its main office building to acquire a new company headquarter and a walk-in customer service facility in downtown San Jose pursuant to § 790 of the Public Utilities Code?**

The Application states SJWC faces the immediate problem of a lack of space in its main office facility, and this "cramped space" will diminish SJWC's service and efficiency.²⁰ The Application further states that the building lacks adequate security and infrastructure for modern technology, and is not in compliance with the Americans with Disabilities Act (ADA).²¹ However, according to the Application, the main office cannot be remodeled or expanded because the building is designated a historic landmark.²² Although SJWC continues to operate out of the facility, the Application states that, "over the last ten years, SJWC has simply outgrown the main office," and the facility "has reached the end of its useful life."²³

The Application states that SJWC has considered all reasonable alternatives and concludes the most the most economic option is to dispose of the main office facility, purchase a new downtown property for a company

²⁰ Application, p. 2.

²¹ Ibid., pp. 5-7.

²² Ibid., p. 5.

²³ Ibid., pp. 2-4.

headquarters and walk-in customer service center, and consolidate all other functions at SJWC's Bascom Avenue campus.²⁴ Thus, SJWC believes its main office facility is no longer useful, and filed its Application, in part, to request that the Commission make the determination that SJWC's main office facility is no longer necessary or useful.

§ 790 (a) states, in part:

"Whenever a water corporation sells any real property that was at any time, but is no longer, necessary or useful in the performance of the water corporation's duties to the public, the water corporation shall invest the net proceeds, if any, including interest at the rate that the commission prescribes for memorandum accounts, from the sale in water system infrastructure, plant, facilities, and properties that are necessary or useful in the performance of its duties to the public." (Emphasis added.)

In order for the Commission to find that the property is no longer necessary or useful, SJWC would first have to stop using the property to provide utility service and remove the property from rate base. For example, if SJWC were to first purchase a replacement facility and relocate utility functions to that new facility, then remove the main office property from rate base, the Commission might (but not necessarily) find that the property is no longer necessary or useful. However, that is not the case here. SJWC seeks to sell property that, at and after the time of sale, continues to be necessary and useful for utility service but wants the Commission to designate the property to be no longer useful so that any proceeds from the sale may be eligible for reinvestment under § 790. SJWC can not have it both ways.

²⁴ Ibid., p. 8.

As stated above, I find that the property to be sold continues to be necessary and useful, and will continue to be necessary and useful even after the sale. Therefore, I can not, at the same time, find that the main office is no longer necessary or useful in the performance of the water corporation's duties to the public. As a result, any proceeds from the sale of SJWC's main office as the transaction is currently proposed are not eligible for reinvestment under § 790 because the sale does not involve "real property that is no longer necessary or useful." If SJWC's main office continues to be necessary or useful at the time it is sold, then the net proceeds from the sale of the property are not eligible for reinvestment under the terms of § 790. Instead, proceeds from the sale would be allocated to ratepayers and shareholders according to the "percentage allocation rule."²⁵ This determination resolves Issues 3 and 4.

D.06-05-041 also established clear procedures for water utilities seeking to reinvest proceeds from the sale of property under § 790, and orders all water utilities seeking to reinvest sales proceeds in infrastructure pursuant to § 790 to comply with the following:

"Track all utility property that was at any time included in rate base and maintain sales records for each property that was at any time in rate base but which was subsequently sold to any party, including a corporate affiliate.

Obtain Commission authorization to establish a memorandum account in which to record the net proceeds from all sales of no longer needed utility property.

²⁵ D.06-05-041 (as modified by D.06-12-043), COL 24, OPs 1, 9, 20.

Use the memorandum account fund as the utility's primary source of capital for investment in utility infrastructure.

Invest all amounts recorded in the memorandum account within eight years of the calendar year in which the net proceeds were realized.” (Excerpt from Ordering Paragraph 17)

In order to reinvest net proceeds from the sale in infrastructure pursuant to § 790, SJWC must comply with the procedures specified in Ordering Paragraph 17 of D.06-05-041. However, the Application does not request authorization to establish the memorandum account required for recording the net proceeds from sales of no longer needed utility property, and SJWC has not yet obtained Commission approval to establish the required memorandum account.²⁶ As such, the Application does not comply with the requirements adopted in D.06-05-041 for water utilities seeking to reinvest in utility infrastructure the net proceeds from the sale of no longer necessary or useful utility property under § 790. Therefore, SJWC has not satisfied the requirements for reinvesting the net proceeds of the sale of no longer necessary or useful utility property in infrastructure under § 790.

Having determined based on the facts presented, I find a § 851 application is required, and SJWC’s application was appropriately filed. I also conclude that any proceeds from the Proposed Transaction are not eligible for reinvestment pursuant to § 790. Accordingly, unless SJWC is no longer interested in selling its main office at this time, we will proceed to consider the sale under § 851. I direct

²⁶ SJWC filed Advice Letter (AL) 368 on June 15, 2006 requesting to establish a Water Infrastructure Act Memorandum Account (WIAMA). The Water Division rejected AL 368 on November 7, 2006. SJWC has not filed a revised advice letter.

SJWC to inform the ALJ in writing by September 21, 2007, if it does not wish to proceed with its Application. Should SJWC indicate its interest in moving forward, the ALJ will issue a ruling to schedule hearings to address the remaining issues in this proceeding.

d. Compliance with ACR/Scoping Memo and ALJ Rulings

The Motion contends that the Suspension Ruling erred in stating SJWC failed to submit on June 4, 2007 the Brief on legal issues identified in the ACR/Scoping Memo. SJWC contends that it served its Brief by mail on June 4, 2007.²⁷ The statement in the Suspension Ruling to which SJWC objects reads, "SJWC did not submit its brief by the established June 4, 2007 deadline, nor explain why it failed to meet the deadline or to ask for additional time."

The ACR/Scoping Memo for this proceeding established filing and service requirements, including the following:

"All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding...We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served...This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, I require concurrent e-mail service to all persons on the service list for whom an e-mail address is available, including those listed under 'Information Only.' Parties are expected to provide paper copies of served documents upon request...Parties shall e-mail courtesy copies of all served and filed documents on the

²⁷ Motion, p. 5.

entire service list, including those appearing on the list as ‘State Service’ and ‘Information Only.’” (Pp. 7-8. Emphasis added.)

Pursuant to the ACR/Scoping Memo and the ALJ ruling of June 1, 2007, SJWC’s Brief should have been filed with the Commission’s Docket Office and served electronically on June 4, 2007 to all persons on the service list with an e-mail address. According to the Motion, SJWC served its Brief by U.S. Mail. Thus, SJWC essentially acknowledges that it did not file and serve its Brief in compliance with the filing and service requirements established for this proceeding. The Motion does not address why SJWC’s Brief was not filed with the Docket Office on June 4, as directed.²⁸ Also, the Certificate of Service attached to the Brief included with the Motion indicates that SJWC did not use the most up-to-date service list as required, and SJWC failed to serve its Brief on some of those on the service list in this proceeding.²⁹

We will not speculate as to why the Brief was never received though U.S. Mail by those who SJWC states it served via U.S. Mail.³⁰ However, our records show that SJWC did not file its Brief with the Commission’s Docket Office until July 2, 2007. Because the ACR/Scoping Memo requires all formally filed

²⁸ Commission records indicate SJWC’s Brief was filed with the Commission’s Docket Office on July 2, 2007. However, we acknowledge that the Brief was included as an attachment to the Motion which was filed with the Docket Office on June 25, 2007.

²⁹ Except for its filing with the Docket Office, SJWC’s Motion suffered from the same defects as its Brief. On June 28, 2007, the assigned ALJ directed SJWC to file its Motion and Brief in compliance with the filing, service and service list requirements established by the ACR/Scoping Memo and Rule 1.10.

³⁰ As of August 9, 2007, none of those persons on the service list SJWC states it served via U.S. Mail had received the Brief through U.S. Mail.

documents to be filed with the Commission's Docket Office and electronically served to all persons on the service list for whom an e-mail address is available, SJWC's Brief was not filed and served by the June 4, 2007 deadline. Therefore, we find that the Suspension Ruling is factually accurate. SJWC's allegation that the Suspension Ruling is factually erroneous lacks merit and is rejected.

IT IS RULED that:

1. Good cause shown, the Administrative Law Judge ruling of June 15, 2007 suspending the schedule in this proceeding is hereby rescinded.
2. The Commission retains discretion to review applications for the sale of utility property pursuant to § 851, and D.06-05-041 did not exempt water utilities from this filing requirement.
3. SJWC's Application for authorization to sell property is the appropriate way to seek Commission approval to sell property under § 851.
4. The property to be sold in the Proposed Transaction continues to be necessary and useful utility property at the time of sale and for a period of time after the sale. Therefore, the sale of SJWC's main office requires Commission approval under Pub.Util. Code § 851.
5. Any proceeds from the sale of SJWC's main office are not eligible for reinvestment under § 790 because the sale does not involve real property that is no longer necessary or useful.
6. If SJWC's main office continues to be necessary or useful at the time it is sold, then the net proceeds from the sale of the property are not eligible for reinvestment under the terms of § 790. Instead, proceeds from the sale would be allocated to ratepayers and shareholders according to the "percentage allocation rule."

7. In order to reinvest net proceeds from the sale of no longer necessary or useful property in infrastructure pursuant to § 790, SJWC must comply with the procedures specified in Ordering Paragraph 17 of D.06-05-041.

8. The Application does not request authorization to establish the memorandum account required for recording the net proceeds from sales of no longer necessary or useful utility property, and SJWC has not yet obtained Commission approval to establish the required memorandum account.³¹ Therefore, the Application does not comply with the requirements adopted in D.06-05-041 for water utilities seeking to reinvest in utility infrastructure the net proceeds from the sale of no longer necessary or useful utility property under § 790.

9. Unless SJWC states that it is no longer interested in selling its main office at this time, we will proceed to consider the sale under § 851. SJWC shall inform the ALJ in writing by September 21, 2007, if it does not wish to proceed with its Application. Should SJWC indicate its interest in moving forward, the ALJ shall issue a ruling to schedule hearings to address the remaining issues in this proceeding.

³¹ SJWC filed AL 368 on June 15, 2006 requesting to establish a Water Infrastructure Act Memorandum Account (WIAMA). The Water Division rejected AL 368 on November 7, 2006. SJWC has not filed a revised advice letter.

10. The Suspension Ruling is factually accurate when it states SJWC did not submit its brief by the established June 4, 2007 deadline, nor explain why it failed to meet the deadline or to ask for additional time. SJWC's allegation that the Suspension Ruling is factually erroneous lacks merit and is rejected.

Dated September 13, 2007, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated September 13, 2007, at San Francisco, California.

/s/ ROSCELLA GONZALEZ

Roscella Gonzalez

***** SERVICE LIST *****

Last Updated on 19-JUN-2007 by: JVG
A0701035 LIST

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